

Bail Slip:

the Appellant/Accused viz. 1.Prem Anandan S/o/Ramadoss, 2. Ramadoss S/o/Kuppuswamy and usha W/o. Ramadoss was directed to be released on bail in and by the order of this Court dated 09.06.2009 and 01.10.2009 and made in MP.1 of 2009 and 2 of 2009 in CrI.A.249 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.249 of 2009

1.Prem Anandan
2.Ramadoss
3.Usha Appellants

vs.

1.The State, rep. by
The Deputy Superintendent of Police,
Periyanaickenpalayam Sub Division,
Coimbatore District.
Crime No.25 of 2006)
2.P.Shanmughathai Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 04.05.2009 passed by the learned Sessions Judge, Magalir Neethimandram, Coimbatore, in S.C.No.170 of 2007.

For Appellant : Mr.V.Karthik, Senior Counsel for
T.S.Gopalan & Co.

For Respondent : Mrs.M.F.Shabana
Government Advocate (Crl. Side)

JUDGMENT

The accused 1 to 3, in Sessions Case No.170 of 2007, on the file of the learned Sessions Judge, Magalir Neethimandram, Coimbatore, are the appellants herein. They stood charged for the offences under Sections 498-A and 304-B IPC. The Trial Court, by judgement dated 04.05.2009, found the accused guilty and convicted them under Section 498-A IPC and

sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- each in default to undergo rigorous imprisonment for one year and convicted them under Section 304-B IPC and sentenced them to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years. The sentences are ordered to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court, with this appeal.

2.The case of the prosecution in brief is as follows:

(i) The deceased in this case one Krithika is the wife of first accused. The second is father-in-law and third accused is the mother-in-law of the deceased. P.W.1 is mother and P.W.2 is father of the deceased. The marriage between the first accused and deceased took place on 20.03.2005 and it is a love marriage. The deceased married the first accused against the wishes of her family members. Subsequently, the deceased had conceived and the accused refused to send the deceased to her parental house for the customary ceremonies. Hence, P.W.1 and others went to the house of the accused and conducted the ceremony. At the time of delivery, P.W.1's family alone spent the entire expenses. After the childbirth, the parents of the deceased gave jewels to the new born child. Thereafter, the accused demanding 10 sovereigns of gold jewels and a cash of Rs.50,000/- and harassed her. After the childbirth, the deceased was taken to P.W.1's house and she stayed there for two months, thereafter they sent the deceased along with customary cheers to her matrimonial home. Thereafter, the first accused demanded money for expansion of his workshop and at that time P.W.1 told him that he require some time to meet his demand. Without consider the request, the accused sent the deceased to the house of P.Ws.6 and 7, one day prior to the occurrence, namely, 04.11.2006, and she had lunch there, and on the next day morning she consumed poison and committed suicide. P.W.1, the mother of the deceased went to the police station and lodged a complaint.

(ii) P.W.12, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No. 25 of 2006 for the offence under Section 174 Cr.P.C. and prepared first information report [Ex.P5] and sent the same to the Revenue Divisional Officer, Coimbatore and copies of the same to the Deputy Superintendent of Police, Periyanaickenpalayam.

(iii) P.W.13, the Revenue Divisional Officer, Coimbatore, went to the Government Hospital, conducted inquest over the dead body of the deceased in the presence of panchayators and issued inquest report[Ex.P10] and filed his report [Ex.P11] and he was of the opinion that the death was due to dowry demand. Then, he sent the dead body along with requisition letter to the

Government Hospital, Coimbatore for conducting postmortem autopsy.

(iv) P.W.14, the Assistant Commissioner of Police, working in Coimbatore East, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared an observation mahazar[Ex.P2], a rough sketch[Ex.P12] in the presence of witnesses. He examined the witnesses and recorded their statements. Based on the investigation, he altered the case for the offence under Section 498-A and 304-B IPC and prepared alteration report [Ex.P13]. Subsequently, he arrested the accused and remanded them to judicial custody.

(v) P.W.11, the Assistant Professor, working in the Government Medical College Hospital, Coimbatore, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

No external or internal injuries noted.

Other Findings:-

Peritoneal and pleural cavities - Empty, Lungs cut Section congested. Heart right side chambers contain low CC clued blood, left side chambers empty, coronaries - patent. Hyoid bone was intact. Stomach contains about 150 ml of thick yellow coloured fluid, with unpleasant smell Mucosa deeply congested and stained yellow. Smell Intestine contains about 40 ml of yellow coloured fluid, with unpleasant smell mucosa congested. Liver, Spleen, Brain sand Kidneys, Cut Section congested and stained yellow. Urinary bladder was empty. Uterus bulky in size, cut Section shows intact embryonic sac of 2 cm diameter with dead embryo in situ.

He is of the opinion that the deceased would appear to have died of consuming Auramine poisons. He issued Postmortem Certificate Ex.P3.

(vi) P.W.14, continued the investigation, examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 14 witnesses were examined and 13 documents were exhibited and no material object was marked.

4. Out of the said witnesses examined, P.W.1 is the mother of the deceased. She spoke about the marriage between the first accused and deceased and conducting customary ceremonies to the deceased. According to her, the deceased informed her that the

accused did not allow her to go to her parental house and the accused are demanding dowry and they have also informed one Devi about the dowry demand. Thereafter, they given 10 sovereigns of gold jewels and at the time of delivery, P.W.1's family alone spent the entire expenses. After the childbirth, the first accused demand more money for expansion of his business. Then, on 05.11.2006, the deceased committed suicide consuming poison. P.W.2 is the father of the deceased. He also spoke about the marriage between the first accused and deceased. According to him, two months after childbirth, the deceased came to his house and told him that the accused demanded dowry and he informed her that he does not have money and requested her to wait for some time. Thereafter, she informed him that all the accused beaten her demanding dowry. P.W.3 is the brother of the deceased. He is living at Chennai and P.W.1 told him about the dowry demand. P.W.4 is the younger brother of the deceased. According to him, he opposed the marriage of the deceased. P.W.1 told him that the accused demanded dowry. P.W.5 is the brother of P.W.2. According to him, P.W.2 told him that the first accused demanded a cash of Rs.50,000/- for expansion on his business and he advised him not giving any money to the first accused. P.W.6 is the another brother of P.W.2. He also residing in the same place. According to him, P.W.2 told him that the first accused demanded a cash of Rs.50,000/-. One day prior to the occurrence, namely, 04.11.2006, the deceased came to his house and she had a lunch there, thereafter on the next day morning, she committed suicide. P.W.7 is wife of P.W.6. She also spoke about the demand of dowry. According to her, on 04.11.2006, the deceased came to her house and had a lunch and on the next day morning she committed suicide. P.W.8 is the witness to the observation mahazar. P.W.9 is the resident of the same village. He spoke about the love marriage between the first accused and deceased. In his cross examination, he stated that the deceased lived with the first accused happily. P.W.10 is an auto driver. He carrying the deceased to the Hospital in his Auto. According to him, the first accused took the deceased in his Auto and on the way to Hospital, the Auto got repair and the first deceased engaged another auto and took the deceased. P.W.11 is the Assistant Professor working in the Government Medical College Hospital, Coimbatore. He conducted postmortem autopsy and gave postmortem certificate Ex.P12. P.W.12 is the Inspector of Police working in the respondent police station. He registered the case and prepared first information report and sent the same to the Revenue Divisional Officer and copies of the same to the higher officials. P.W.13 is the Revenue Divisional Officer working at Coimbatore. He conducted inquest over the dead body and given inquest report, and filed his report and sent the dead body along with requisition letter to the Government Hospital, Coimbatore for postmortem. P.W.14 is the Assistant Commissioner

of Police, working at Coimbatore East. He conducted investigation, arrested the accused and remanded them to judicial custody, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. They have examined 5 witnesses and also marked 29 documents. D.W.1, the Doctor, working in Kuppuswamy Hospital, Pappanaickenpalayam. According to him, the 3rd accused is a patient and he was admitted in the Hospital on 04.08.2007 for heart surgery. D.W.2, the Chief Reservation Officer, working in Southern Railway, Coimbatore. He examined the advance reservation register and confirmed that the third accused went to Chennai on 31.10.2006, and the ticket was also marked as Ex.D19. D.W.3, the Superintendent, working in the Commercial Tax Department, where the third accused was working. According to him, the third accused went on medical leave from 26.10.2006 to 31.07.2007. D.W.4, the Assistant Commercial Tax Officer, working in the Commercial Tax Department at Thudialur. He spoke about the leave taken by the third accused. D.W.5 is the first accused in this case. He spoke about the marriage between him and deceased.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgment. Challenging the above said conviction and sentence, the accused are before this Court with this appeal.

7. I have heard Mr.V.Karthik, learned Senior Counsel appearing for the appellants and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the materials available on record.

8. Mr.V.Karthik, learned Senior Counsel appearing for the appellants would submit that the evidence of P.Ws.1 and 2 regarding dowry demand by the accused cannot be believed for the simple reason that according to them after the marriage, the accused did not permit the deceased to go to P.W.1's house. Further, P.W.6 is the brother of P.W.1 and P.W.7 is the wife of P.W.6 and they have categorically stated that the deceased came to their house and she did not go to P.W.1's house. Hence, the accused were not in talking terms with the deceased and P.Ws.1 and 2 did not have a good relationship with the deceased, hence there is no occasion for the accused for demanding dowry from them. Even the evidence of P.Ws.1 and 2 also not consistent regarding demand of dowry. According to P.W.1, the accused

make a demand through one Devi, but the said Devi was not examined by the prosecution. P.W.2 totally given different version. He stated that the first accused demanded a sum of Rs.50,000/- for expansion of his business. Further, two months after childbirth, the deceased came to their house and told him that the accused demanded dowry. Hence, there is a lot of contradiction in their evidence regarding dowry demand. Apart from that, the evidence of P.Ws.5,6 and 7 are only hearsay evidence. All of them deposed that P.Ws.1 and 2 told them that the first accused demanded a sum of Rs.50,000/- for expansion of his workshop. Hence, their evidence also cannot be believed. The learned Senior Counsel further contended that to bring home the offence under Section 304-B IPC, absolutely there is no evidence, that soon before the occurrence the accused demanded dowry and harassed the deceased. The learned Senior Counsel further submitted that the prosecution has failed to prove the charges against the accused and hence he sought for allowing this appeal.

9. Per contra, the learned Government Advocate(Crl. Side) appearing for the State would contend that P.Ws.1 and 2 are the parents of the deceased and they have categorically stated that the deceased came to their house and told them that the accused demanding dowry and only due to the harassment by the accused, she committed suicide by consuming poison. Apart from that the evidence of the other prosecution witness, namely, P.Ws.1,2,5,6 and 7 clearly established the guilt of the accused, the trial Court after considering the evidence in proper perspective, convicted the accused and hence she sought for dismissal of this appeal.

10. I have carefully considered the rival submissions.

11. The question now arisen for consideration is whether the prosecution has proved the guilt of the accused beyond any reasonable doubt. In order to prove the charges, the prosecution has examined 14 witnesses. P.Ws.1 and 2 are parents, 3 and 4 are brothers of the deceased. It is the case of the prosecution that the marriage between the first accused and deceased was a love marriage and P.Ws.3 and 4 have opposed the said marriage, after the marriage, the deceased did not use to come to the house of P.Ws.1 and 2. Thereafter, the deceased was pregnant, P.W.1 and others went to the house of the accused and there they conducted customary ceremonies. Even though, P.W.1 has stated that after the childbirth, the deceased came to her house, It was totally contradicted by P.Ws.6 and 7, who are brother and wife of P.W.1. P.Ws.6 and 7 stated that the deceased avoiding to go to the house of P.W.1. P.W.7 advised the deceased to go to the P.W.1's house and tender apology to P.Ws.1 to 4. In his cross examination, P.W.2 stated that the

deceased did not use to come to his house and she is only goes to the house of P.Ws.6 and 7. Further, the brothers of the deceased, namely, P.Ws.3 and 4 also not in talking terms with the deceased. Hence, the evidence of P.Ws.2, 6 and 7 are totally contradicts the evidence of P.W.1.

12. So far as the demand of dowry is concerned, the evidence of P.W.1 that it is the first accused demanded dowry through one Devi, and from her she came to know about the dowry demand. But the said Devi was not examined by the prosecution. P.W.2 is also says that after the childbirth, the deceased came to his house and told him that the accused demanded dowry. P.Ws.3 and 4 are the brother of the deceased. According to them, P.W.2 told them that the first accused demanded Rs.50,000/- as dowry for the purpose of making improvement of his workshop. But, in his evidence, P.W.2 did not whisper and that they demand dowry from him. Even though P.Ws.6 and 7 deposed that P.W.2 told them that the first accused demanding Rs.50,000/- as dowry, it did not draw any support from the evidence P.W.2. Hence, there are lot of contradictions in the evidence of prosecution witnesses regarding demand of dowry. Apart from that from the evidence of P.W.6 and 7, it could be seen that the deceased used to go their house only and One day prior to the occurrence i.e., on 04.11.2006, the deceased went to the house of P.W.7 and she had a lunch there. On that day, the deceased did not told P.Ws.6 and 7 any thing regarding a harassment at the hands of the accused. In his cross examination, P.W.7 stated that the deceased told her that this is no dowry demand from the accused, and she also informed her that she is living happily. From her evidence, it could be seen that her only grievance was that the brothers of the deceased totally against her, and they are not accepting her, fearing the same, she did not go to her parents house, P.W.7 advised her to meet P.Ws.3 and 4 and tender apology and they will forgive all. Considering the above, it is doubtful whether the deceased was in talking terms with her family, and she used to go to the house of P.W.1 and there was any chance for the accused demanding dowry from P.Ws.1 and 2. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt.

13. So far as the offence under Section 304-B IPC is concerned, to prove the offence under Section 304-B IPC, the prosecution should establish that a woman has died otherwise than under a normal circumstance, within a period of seven years of marriage, and soon before her death, the deceased have been subject to cruelty or harassment by her husband or his relatives, in connection with demand of dowry, the Hon'ble Supreme Court in MAJOR SINGH AND ANOTHER Vs. STATE OF PUNJAB

reported in 2015 (5) SCC 201, has held as follows:-

"10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:-

(i) the death of woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the women soon before her death.

14. In the instant case, even though the prosecution has established the first two ingredients, but as already held that there is no evidence to establish that the deceased was subject to cruelty or harassment in connection with demand of dowry and the prosecution failed to prove the other three ingredients. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge under Section 304-B IPC. Hence, the petitioner is entitled for acquittal.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellants/accused in S.C.No.170 of 2007 dated 04.05.2009 on the file of the learned Sessions Judge, Magalir Neethimandram, Coimbatore, is set aside and the appellants/accused are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts, if any, paid by them are ordered to be refunded forthwith.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Coimbatore.
2. The Chief Judicial Magistrate,
Coimbatore (for information)
- 3.The Sessions Judge,
Magalir Neethimandram,
Coimbatore.
4. The Superintendent,
Central Prison, Coimbatore.
- 5.The Deputy Superintendent of Police,
Periyanaickenpalayam Sub Division,
Coimbatore District.
6. All Women's Police Station,
Thudiyaloor,
Perianaicken palayam, Coimbatore.
- 7.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.S.Gopalan, Advocate, S.R.No.9619

Cr1.A.No.249 of 2009

AD(CO)
RS(28/06/2017)

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